

CC:INTL-0295-91
Br2:PCBray

SEP 24 1991

Larry Edgar, International Examiner

David Bower, Senior Technical Reviewer, Branch 2, Office of Associate Chief Counsel (International)

Informal technical assistance concerning whether a certain cruise line engages in "international operation" of ships

THIS DOCUMENT INCLUDES STATEMENTS SUBJECT TO THE ATTORNEY-CLIENT PRIVILEGE AND THE ATTORNEY WORK PRODUCT PRIVILEGE. THIS DOCUMENT SHOULD NOT BE DISCLOSED TO ANYONE OUTSIDE THE IRS, INCLUDING THE TAXPAYERS INVOLVED, AND ITS USE WITHIN THE IRS SHOULD BE LIMITED TO THOSE WITH A NEED TO REVIEW THE DOCUMENT FOR USE IN THEIR OWN CASES.

This is in response to your memorandum dated March 12, 1991, in which you requested our informal opinion on whether income from operating cruise ships on various routes would be considered income from the international operation of ships, within the meaning of section 883. The following advice expands upon the advice given to you in a telephone discussion of this issue on April 15, 1991, by Patricia Bray, an attorney in this office.

A prior memorandum to you discussed whether certain routes of [REDACTED] between [REDACTED] and [REDACTED] violated U.S. Customs Service laws regarding coastwise trade. Coastwise trade is limited to U.S. vessels and involves the carriage of cargo or passengers between two U.S. ports. Pursuant to 19 CFR 4.80(a) no foreign vessel is permitted to transport, either directly or by way of a foreign port, any passenger or merchandise between points in the United States. An exception to this rule occurs if the passenger has proceeded with the vessel to a "distant foreign port" before disembarking at a coastwise port.

Section 4.80(a) provides that the term "distant foreign port" means any foreign port that is not a foreign port in North America, Central America, the Bermuda Islands, or the West Indies (including the Bahama Islands, but not including the Leeward Islands of the Netherlands Antilles, i.e., Aruba, Bonaire, and Curacao), or a port in the U.S. Virgin Islands. Certain exceptions are also available for voyages between the United States and ~~Puerto Rico~~.

008135

Section 19 CFR 4.80(d) provides that the owner or charter of a foreign vessel or any other interested person may request from Headquarters, U.S. Customs Service, Attention: Carriers Rulings Branch, an advisory ruling as to whether a contemplated voyage would be considered to be coastwise transportation in violation of section 46 U.S.C. 289. Such a request must be filed in accordance with the provisions of part 177, Customs Regulations (19 CFR part 177). Thus, if you have questions regarding specific routes advertised by [REDACTED] or whether or not any vessel it operates or charters qualifies for coastwise trade, you may request a ruling directly from the U. S. Customs Service.

However, whether or not a vessel violates the U.S. Customs Service regulations regarding coastwise trade is not determinative of whether benefits are available under section 883 of the Internal Revenue Code for U.S. tax purposes. Under the Code, section 883 is only available to foreign corporations. [REDACTED] is a [REDACTED]. Therefore, [REDACTED] an exclusion under section 883. However, if a foreign corporation owns and either bareboat or time charters the vessel(s) operated on the advertised route(s) to [REDACTED], such a foreign corporation may be eligible for a section 883 benefit. In that case, the question of whether the foreign entity is engaged in the international operation of ships becomes relevant.

The term "international operation" is not defined in either the statute or the legislative history of section 883, and regulations have not been issued under this section. However, section 883 was amended by section 1212 of the 1986 Act, which also amended the rules for determining the source of transportation income under section 863(c) and imposed a four percent tax on the U.S. source gross transportation income of foreign persons. The term "U.S. source gross transportation income" (USSGTI) means transportation income (as defined in section 863(c)(3)) that is derived from voyages that begin or end in the United States. USSGTI was generally intended by Congress to be eligible for exclusion from gross income under section 883. Therefore, if sections 863(c), 883, and 887 were intended to work together, the first meaning of the term "international operation" would be the operation of voyages that begin or end in the United States.

The statutory language used in defining the terms "transportation income" under section 863(c) and "foreign base company shipping income" under section 954 are nearly identical. Foreign base company shipping income only occurs if the vessel is used in "foreign commerce". Thus, it is reasonable to examine the definition of the term "foreign commerce" (as it applies in the section 954 context) as a

second basis for the definition of the term "international operation".

Section 1.954-6(b)(3) provides that, for purposes of sections 951-964, a vessel is used in "foreign commerce" to the extent it is used in the transportation of property or passengers between a port in the United States or a possession of the United States and a port in a foreign country, or between a port in a foreign country and another in the same or in another foreign country. Section 872(b)(7) and section 883 provide that, to the extent provided in regulations (which have not been issued), a possession will be treated as a foreign country. Using these rules as guidelines, the term "international operation of a ship" would involve operating the vessel on a route between a port in the United States and a port in a possession or in a foreign country, or between a port in one foreign country and a port in that same or in another foreign country.

Applying these interpretations, the operation of vessels on all of the routes published on the attached materials which you enclosed with your letter would be considered "international operation" within the meaning of section 883, because each route includes both a U.S. and a foreign port. Any foreign corporation operating or chartering out vessels operated on these routes could be eligible for benefits under section 883, provided the other section 883 requisites were satisfied. Whether the coastwise trade rules of the U.S. Customs Service were satisfied or not does not impact the application of the provisions of the Internal Revenue Code.